

Message Text

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ACTION ARA-10

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 1997

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

UNCLAS BRASILIA 9025

E.O. 11652: N/A

TAGS: AFSP BR

SUBJECT: PERMISSION TO TEACH

REF: (A) STATE 109306 (B) BRASILIA 2317

1. EMBASSY OFFICER APPROACHED BRAZILIAN FOREIGN MINISTRY, AS REQUESTED IN REFTEL (A), TO DISCUSS FURTHER THE PROCEDURES TO BE FOLLOWED TO PERMIT EMPLOYMENT OF DEPENDENTS OF AMERICAN FOREIGN SERVICE PERSONNEL IN THE LOCAL ECONOMY. THE DEPUTY CHIEF OF PROTOCOL WAS SYMPATHETIC AND RECEPTIVE TO THE EMBASSY'S PRESENTATION PARTICULARLY WITH REGARD TO ARTICLE 57 OF THE VIENNA CONVENTION ON CONSULAR RELATIONS ENTITLED "SPECIAL PROVISIONS CONCERNING PRIVATE GAINFUL OCCUPATION". AFTER READING THE CONTENTS OF SECTION (2) (C) OF THE ARTICLE, SPECIFICALLY THE PART THAT READS "PRIVILEGES AND IMMUNITIES PROVIDED IN THIS CHAPTER SHALL NOT BE ACCORDED: TO MEMBERS OF THE FAMILY OF A CONSULAR POST WHO THEMSELVES CARRY ON ANY PRIVATE GAINFUL OCCUPATION IN THE RECEIVING STATE", HE SAID THAT THIS GAVE THE FOREIGN OFFICE "A PEG TO HANG ITS HAT". AFTER CONSULTATION WITH THE OFFICER IN CHARGE OF THE PASSPORT SECTION OF THE FOREIGN OFFICE, THE DEPUTY CHIEF OF PROTOCOL INFORMED EMBASSY OFFICER THAT, IN HIS OPINION, ALL THAT WAS NEEDED WAS NOTE FROM THE EMBASSY REQUESTING TEMPORARY VISAS IN THE PASSPORTS OF WORKING DEPENDENTS. IN A SUBSEQUENT DISCUSSION BETWEEN EMBASSY CONSULAR OFFICER AND OFFICER IN THE PASSPORT OFFICE, IT WAS AGREED EMBASSY WOULD FORWARD AN AIDE MEMOIRE TO THE FOREIGN OFFICE REQUESTING

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THAT THESE DEPENDENTS BE GIVEN OFFICIAL GUIDANCE ON DOCUMENTAT-

TION NECESSARY FOR THEM TO WORK IN BRAZIL.

2. POST SELECTED MRS. SYDNEY LEWIS HEFLIN FROM SAO PAULO AS TEST CASE, SINCE HER REQUEST WAS FIRST ONE RECEIVED.

3. THE AIBLR MEMOIRE DATED JULY 11, 1975 STATED EMBASSY HAD RECEIVED REQUEST FROM MRS. HEFLIN FOR PERMISSION TO ACCEPT TEACHING APPOINTMENT AT THE AMERICAN SCHOOL IN SAO PAULO AND EMBASSY HAD NO OBJECTION TO SUCH EMPLOYMENT. EMBASSY REFERENCED THE DISCUSSIONS WITH OFFICERS OF THE FOREIGN OFFICE WHO HAD INDICATED PREVIOUSLY ONLY NECESSITY TO CHANGE VISA IN MRS. HEFLIN'S PASSPORT TO A TEMPORARY ONE. EMBASSY ATTACHED THE USG POLICY STATEMENT WHICH COVERS SIMILAR SITUATION IN THE US AND INFORMED FOREIGN OFFICE THAT USG DOES NOT REQUIRE COMPLETE WAIVER OF IMMUNITY OR A NEW VISA FOR DEPENDENTS OF DIPLOMATIC PERSONNEL ASSIGNED TO THE US TO ENGAGE IN CERTAIN PROFESSIONAL ACTIVITIES OUTSIDE OF THEIR OFFICIAL FUNCTIONS. THE AIDE MEMOIRE CONCLUDE WITH THE REQUEST THAT NECESSARY ACTION BE TAKEN TO ENABLE MRS. HEFLIN TO ACCEPT THE TEACHING POSITION OFFERED IN SAO PAULO. MRS. HEFLIN'S PASSPORT WAS FORWARDED WITH THE AIDE MEMOIRE.

4. SHORTILY AFTER DELIVERING AIDE MEMOIRE, EMBASSY RECEIVED TELEPHONE CALL INDICATING REQUEST FOR TEMPORARY VISA WOULD BE APPROVED AND EMBASSY WOULD RECEIVE AN AIDE MEMOIRE OUTLINING WHAT FURTHER ACTION EMBASSY SHOULD TAKE.

5. AFTER NUMEROUS SUBSEQUENT TELEPHONE INQUIRIES ON STATUS OF AIDE MEMOIRE, EMBASSY RECEIVED IT ON 10/7/75. A.M. STATES EMBASSY SHOULD REQUEST, BY FORMAL NOTE, THE CANCELLATION OF THE DIPLOMATIC VISA NOW HELD BY MRS. HEFLIN AND ISSUANCE OF TEMPORARY VISA, ENABLING HER TO WORK IN BRAZIL. THE AIDE MEMOIRE FURTHER STATES, "IN ACCORDANCE WITH ARTICLE 57, 2,3 OF THE VIENNA CONVENTION ON CONSULAR RELATIONS, MRS. HEFLIN WILL LOOSE THE PRIVILEGES AND IMMUNITIES GRANTED TO HER HUSBAND, WHICH WOULD NOT BE COMPATIBLE WITH THE EXERCISE OF REWARDED ACTIVITY AND THE EMPLOYMENT LINKS IN THE COUNTRY. HOWEVER, NEXT TO THE TEMPORARY VISA WHICH WILL BE PLACED IN MRS. HEFLIN'S PASSPORT, UNCLASSIFIED

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A NOTATION WILL READ THAT SHE IS THE WIFE OF MR. MARTIN G. HEFLIN, CONSUL AT THE AMERICAN CONSULATE IN SAO PAULO". END OF QUOTE, IT IS CLEAR TO THE EMBASSY THIS MEANS A COMPLETE WAIVER OF IMMUNITY WHICH IS COUNTER TO DEPARTMENT'S POLICY IN PARAGRAPH 3 OF REFTTEL.

6. AS EMBASSY HAS POINTED OUT IN BRASILIA 2317, MRS. HEFLIN IS ONLY ONE OF FIVE OR SIX DEPENDENTS WHO HAVE

INDICATED WILLINGNESS TO CHANGE STATUS, WAIVE DIPLOMATIC IMMUNITY, PAY BRAZILIAN INCOME TAX ON EARNINGS AND COMPLY WITH ALL OTHER BRAZILIAN LAWS IN THIS REGARD.

7. EMBASSY CONCERNED THAT IMPLEMENTATION OF PROCEDURES OUTLINED ABOVE WOULD PLACE WORKING DEPENDENTS IN TOTALLY UNPROTECTED POSITION, COULD ESTABLISH PRECEDENT ON PAYMENT OF LOCAL TAXES, AND COULD JEOPARDIZE STATUS OF ADMINISTRATIVE AND TECHNICAL STAFF WHOSE RIGHTS AND PRIVILEGES ARE NOT AS CLEAR AS THOSE WITH DIPLOMATIC STATUS. HOWEVER, ISSUE OF WORKING DEPENDENTS HAS BECOME IMPORTANT HERE AND POST REQUESTS DEPARTMENT'S ADVISE AND STATEMENT WHETHER AUTHORITY MAY BE GRANTED DEPENDENTS TO WAIVE THEIR IMMUNITIES FOR THE SAKE OF EMPLOYMENT.
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